

# P.R. GUPTA & CO.

## CHARTERED ACCOUNTANTS

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### **‘LATE FEE FOR FILING ITR BEYOND DUE DATE’**

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***“It is very dis-appointing to note that mandatory Late fees under 234F for late filing of ITR is being levied by income tax department by having a mis-interpreted determination of Total Income.”***

#### **I. Preamble:**

There are some serious consequences of filing income tax return beyond the prescribed due dates including compulsory levy of late fees. The due date of ITR has been extended to 10th January, 2021 in the case of non-audit cases and to 15<sup>th</sup> February for companies and audit cases.

#### **II. Consequences of Late filing of ITR :**

The following are the two main consequences of filing ITR beyond the due dates of filing.

- 1) As per section 80, the business losses and losses under capital gains cannot be carried forward for next years for set off. Although loss from house property can be carried forward.
- 2) Late fees under section 234F is imposed mandatorily. This is being compulsorily charged in the ITR utility and after paying late fees , the ITR can be filed.

### **III. When is Late Fees attracted :**

As per section 234F, if an assessee fails to file his ITR with in the prescribed due dates, then late fees gets attracted. This is as follows:

- a) where 'Total income' of Tax-Payer does not exceed Rs five Lakhs, then late fees is Rs. 1,000
- b) Where 'Total income' exceeds Rs five Lakhs,
  - i. if the return is furnished on or before the 31st day of December of the assessment year then late fees is Rs. 5,000;
  - ii. ten thousand rupees in any other case:

### **IV. Determining the 'Total Income' :**

Now a question arises, what is the total income of the Tax-payer.

- i. The first stage is, calculating income under each head of income. Salary, house property, other sources, capital gains, business and give respective deductions under specific head of income. That is standard deduction of Rs.50000 , HRA etc, standard deduction of 30% for house property, section 54 deductions from capital gains etc



- ii. The second stage is aggregation of all these income from various heads of income which is called Gross Total Income. This excludes exempt income under section 10.
- iii. Third stage is deduction under Chapter VIA i.e deduction u/s 80C, 80D, etc. from the Gross Total Income to arrive at the 'Total Income' or the Taxable Income.

'Taxable Income' or 'Gross Total Income' are not defined under the Income tax Act. However section 2(45) defines "total income" which means the total amount of income referred to in section 5, computed in the manner laid down in this Act ;

As per section 5, total income is not defined but it only gives scope of total income. That is in particular for scope of income to be taxed in case of Resident and Non-residents. Section 80A specifies that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U

Therefore it is very clear that 'Total Income' means final taxable income as computed after giving effect to all provisions of the Income tax Act.



**V. Incorrect calculations by Income Tax Utility :**

It is very dis-appointing to note that Late fees under 234F for late filing of ITR is being levied by income tax department by having a mis-interpreted criterion. The ITR utility on the Income Tax website is calculating Total Income for the purpose of 234F by not giving deductions under 80C etc under Chapter VIA. This means he will be liable to late fees of 234F even if he is not required to file the return. This is totally incorrect.

In fact it may be noted that for following purposes, Total Income is accepted as total Income after deductions under Chapter VI-A i.e for 80C etc.

- a) For determining the income which does not exceed the maximum limit exempt under income tax act. for filing return under sec 139(1)(b)
- b) For determining tax on agricultural Income
- c) For giving tax rebate under section 87A
- d) For disclosing Assets as per ITR forms for a Tax payer having total Income more than 50 Lacs.
- e) For levying Surcharge, it is with reference to Total Income.
- f) For determining total income under section 6 for ascertaining Residential Status under certain circumstances



**VI. Conclusion:**

Late fees under section 234F is mandatory in nature. This is being charged in the ITR utility and after paying this late fees only the ITR can be filed. CBDT should immediately correct the utility and levy fees under 234F by correctly calculating the 'Total Income' after giving Chapter VI-A deductions. Further due to continuing Pandemic, Interest already being charged under various sections should be enough for compensating the Govt. and therefore the fees should be waived if return is filed till 31<sup>st</sup> March, 2021. There are practical difficulties in filing appeal against the fees under section 234F .

**ABOUT AUTHOR:**

Author is a Fellow Member of the Institute of Chartered Accountants of India (ICAI) and also Fellow Member of The Institute of Company Secretaries of India (ICSI). Author is doing CA practice and has more than 40 years of experience. He is a former Senior Vice-President of Noida Management Association, Former Chairman of Noida Chapter of the ICSI and Former Secretary of Noida Branch of ICAI.

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